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July 24, 1996

By Overnight Delivery

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4389

Dear Messrs. or Mesdames:

I. Introduction.

We represent Jim Prince and the Prince for Congress Committee (the "Committee"). This letter is in response to a June 20, 1996, letter from Colleen Sealander. The letter states that a complaint has been received by the Federal Election Commission (the "Commission") indicating that the Committee and Mr. Prince, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act").

It is respectfully submitted that the Commission should conclude that, at least as to the Committee and Mr. Prince, no action should be taken. There is no reason to believe that there has been a violation of the Act by the Committee and/or Mr. Prince.

II. Summary of the Complaint.

The complaint, filed by the Vice Chairman of the Orange County Republican Party, contends, based upon an article in a newspaper, that James Toledano and the Orange County Democratic Central Committee received payments of \$5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of Mr. Prince's candidacy to be the Democratic nominee for the 46th Congressional District in California. The complaint alleges that the money from Dr. and Mrs. LaPrade was used to finance a mailer supporting Mr. Prince's candidacy, which was mailed after the 20th day, but more than 48 hours before 12:01 a.m. of the day of the election. The complaint alleges that no pre-election report and/or 48-hour notification was filed, that the mailer did not include the appropriate disclaimer, and that Dr. LaPrade and Mrs. LaPrade exceeded the contribution limits.

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III. Facts.

Mr. Prince was a candidate to be the Democratic nominee for the 46th Congressional District in California. Declaration of Jim Prince ("Prince Decl.") at ¶ 2. The primary election was held on March 26, 1996. *Id.* Mr. Prince failed to win the nomination, placing third. *Id.*

During the course of that campaign, a mailer apparently was sent, which stated that the California Democratic Party had endorsed Mr. Prince's candidacy. The mailer also stated that the CDP had endorsed a candidate for the California Assembly, Lou Correa.

It remains uncertain and unknown to the Committee and Mr. Prince precisely what transpired with respect to this mailer. We have received a copy of a letter to the Commission from Fredric D. Woocher dated May 15, 1996, on behalf of the Orange County Democratic Party and Central Committee (the "Party"). The letter concludes that the mailer was produced and paid for by James Toledano, who is the Chair of the Party, using \$10,000 received by check from Dr. Paul W. LaPrade, and that the transaction constituted an in-kind contribution by Dr. LaPrade to the Committee with Mr. Toledano as the conduit or intermediary. The letter states that the Party was not the intermediary, and that Mr. Toledano acted on his own and without the Party's knowledge or authorization. The letter also states that, while the Party is unaware when the check was received, it was in Mr. Toledano's possession as of March 6, 1996.

It also is our understanding that Mr. Toledano's position on this matter is that it stems from an innocent mistake on Mr. Toledano's part in connection with this transaction. It is our understanding that he believes that Dr. LaPrade and/or Mrs. LaPrade^{1/} simply made a contribution to the Party, and that the contribution was not earmarked in any way to support Mr. Prince's candidacy. He apparently maintains that he was contacted by Mrs. LaPrade, who stated that she wanted to make a contribution to the Party. He maintains that she did not identify herself in any way and did not state that she wanted the money to be used to support Mr. Prince's campaign. It is our understanding that Mr. Toledano maintains that he decided to use the money contributed to the Party by Dr. LaPrade and/or Mrs. LaPrade in order to pay for a slate card identifying Mr. Prince and Mr. Correa. Mr. Toledano apparently maintains that he was acting on behalf of the Party with respect to this transaction, and that he was attempting to fall within 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9), which provide that the payment by a local committee of a political party of the costs of the preparation or mailing incurred by such committee with respect to a printed slate card listing three or more candidates for any public office is not deemed a contribution. We understand that he maintains that he was not aware that the slate card must list three or more candidates to fall within this exemption. Thus, it appears that it is his position that the transaction either did not constitute a contribution by Dr. or Mrs. LaPrade or by the Party, or that, if the transaction did in fact constitute a contribution, it only occurred by virtue of a mistake on his part.

^{1/} Mrs. LaPrade is Mr. Prince's sister

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Whatever the actual circumstances, Mr. Prince did not know that there may have been an excessive contribution and/or that the transaction constituted a reportable event and was not aware of this at the time. Mr. Prince did not know at the time of the alleged events that Dr. LaPrade and/or Mrs. LaPrade had spoken with Mr. Toledano and did not know what they had discussed. Prince Decl. at ¶ 5. Mr. Prince did not speak to Dr. or Mrs. LaPrade and suggest or request that they make a contribution to the Party or make a contribution to his campaign in this fashion. *Id.* Mr. Prince was unaware that Dr. LaPrade and/or Mrs. LaPrade had written a check in any amount to the Party until approximately when the mailer began to be received. *Id.* If the Commission were to conclude that Dr. LaPrade and/or Mrs. LaPrade had earmarked a contribution to his campaign through Mr. Toledano and/or the Party, Mr. Prince was unaware that this had taken place. *Id.* If the Commission were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made an excessive contribution to his campaign, Mr. Prince was unaware that this had taken place. *Id.* If the Commission were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made a contribution in order to allow the Party to prepare and disseminate the mailer -- or instructed the Party to use the money to pay for the mailer -- Mr. Prince was unaware of this. *Id.*

Likewise, Mr. Prince was unaware of Mr. Toledano's activities and/or the activities of the Party regarding this matter. *Id.* at ¶ 6. Mr. Prince did not speak to Mr. Toledano about this transaction and suggest that funds from Dr. LaPrade or Mrs. LaPrade be used to pay for a mailer to support his candidacy. *Id.* He did not know that Mr. Toledano may have used funds from Dr. LaPrade and/or Mrs. LaPrade to pay for a mailer supporting his candidacy. *Id.* This particular expenditure was made without cooperation with Mr. Prince. *Id.* They did not consult about this particular expenditure. *Id.* Mr. Prince did not act in concert with them concerning this mailer. *Id.* Mr. Prince did not give his prior consent. *Id.* There was no arrangement, coordination, or direction by Mr. Prince prior to the distribution of the mailer. *Id.* Mr. Toledano was not authorized to raise or expend funds for Mr. Prince, never was an officer of the Committee, and never received any form of compensation or reimbursement from Mr. Prince and/or the Committee. *Id.*

IV. Analysis.

Based upon these facts, no action should be taken by the Commission as to the Committee and/or Mr. Prince. Whether the transaction involved an independent expenditure by Dr. LaPrade, Mrs. LaPrade, and/or the Party, or a contribution by Dr. LaPrade, Mrs. LaPrade, and/or the Party, there should be no action taken by the Commission against Mr. Prince and the Committee.

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A. Independent Expenditure.

The transaction may have involved an independent expenditure by the Party, Dr. LaPrade, and/or Mrs. LaPrade.^{2/} If such were the case, there obviously should be no reason to believe that there was a violation by Mr. Prince or the Committee.

As the Commission doubtless is aware, 2 U.S.C. § 431(17) provides that an independent expenditure is:

an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

11 C.F.R. § 109.1 similarly defines an independent expenditure as an

expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

The regulation further defines what it means to have been made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of the candidate or his or her agent. The regulation states that:

(4) Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate means:

- (i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

^{2/} Mr. Prince has not been able to interview all individuals working for the Committee in order to ascertain their roles, if any, in connection with the mailer. The following description is based upon his knowledge and actions.

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- (A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;
- (B) made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent.

As noted, the facts known to Mr. Prince suggest that the transaction may have been an independent expenditure. This particular expenditure by Mr. Toledano, the Party, and/or Dr. and Mrs. LaPrade was made without cooperation with Mr. Prince. Prince Decl. at ¶ 6. They did not consult concerning this expenditure. *Id.* Mr. Prince did not act in concert with them concerning this particular mailer. *Id.* Mr. Prince did not give his prior consent. *Id.* There was no arrangement, coordination, or direction by Mr. Prince prior to the distribution of the mailer. *Id.* Mr. Toledano was not authorized to raise or expend funds for Mr. Prince, never was an officer of the Committee, and never received any form of compensation or reimbursement from Mr. Prince and/or the Committee. *Id.*

Assuming that this was an independent expenditure, there would be no reporting requirement on the part of the Committee and there would be no applicable contribution limitations controlling the Committee. *See, e.g.,* AO 1978-49 (August 28, 1978). Under those circumstances, there could be no violation by Mr. Prince and/or the Committee; there would be no contribution in excess of the limitation, no reporting obligation by the Committee, and no disclaimer requirement concerning the Committee.

B. Contribution/Expenditure.

If the FEC were to conclude that the transaction was not an independent expenditure, that the transaction in fact technically constituted a contribution by Dr. LaPrade, Mrs. LaPrade, and/or the Party to the Committee, there again should be no finding as to the Committee or Mr. Prince. On these facts, even under that scenario, the Commission should conclude that no action should be taken as to Mr. Prince and/or the Committee.

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It would be inappropriate, for example, to take action against Mr. Prince based upon the alleged receipt of an excessive contribution under these circumstances. Mr. Prince did not know that there may have been an excessive contribution made. He did not know about the involvement of Dr. LaPrade and/or Mrs. LaPrade. Mr. Prince did not know at the time of the alleged events that Dr. LaPrade and/or Mrs. LaPrade had spoken with Mr. Toledano and did not know what they had discussed. Prince Decl. at ¶ 5. Mr. Prince did not speak to Dr. or Mrs. LaPrade and suggest or request that they make a contribution to the Party or make a contribution to his campaign in this fashion. *Id.* Mr. Prince did not know that Dr. LaPrade and/or Mrs. LaPrade had written a check in any amount to the Party until approximately when the mailer began to be received. *Id.* If the Commission were to conclude that Dr. LaPrade and/or Mrs. LaPrade had earmarked a contribution to his campaign through Mr. Toledano and/or the Party, Mr. Prince was unaware that this had taken place. *Id.* If the Commission were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made an excessive contribution to his campaign, Mr. Prince was unaware that this had taken place. *Id.* If the FEC were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made a contribution in order to allow the Party to prepare and disseminate the mailer -- or instructed the Party to use the money to pay for the mailer -- Mr. Prince was unaware of this. *Id.*

If it were concluded that the transaction involved an excessive contribution by the Party, Mr. Prince also had no idea that this may have been the case. He did not know that the Party may have made an excessive contribution. Mr. Prince reasonably relied that the Party and/or Mr. Toledano were acting properly with respect to their activities. *Id.* at ¶ 7. He reasonably assumed that the Party would not make an excessive contribution. *Id.* He reasonably assumed that the Party and/or Mr. Toledano would not accept, encourage, or be a conduit for an excessive contribution. *Id.* He reasonably assumed that Mr. Toledano and/or the Party would comply with the appropriate requirements to make sure that its transactions were proper in all respects. *Id.*

It also would be inappropriate to take action against Mr. Prince based upon the alleged failure to report the contribution and/or expenditure in a timely way. As noted, Mr. Prince did not know that the transaction may have involved a contribution by Dr. LaPrade, Mrs. LaPrade, and/or the Party. Mr. Prince was unaware that there was any reportable activity on the part of the Committee with respect to the transaction. *Id.* at ¶ 4. He was not aware that a contribution may have been made that should have been reported by way either of the pre-election report or 48 hour notification. *Id.* As soon as he became aware that there may have been such a contribution from newspaper accounts, the Committee erred on the side of disclosure by tentatively reporting this as a contribution. *Id.* at ¶ 9. The Committee did so even though it was not certain what had taken place merely in order to be sure the transaction fully was reported in some fashion to the Commission. *Id.*

Further, it would be inappropriate to take action against Mr. Prince based upon the alleged failure to include in the mailer a disclaimer. Mr. Prince in no way controlled the mailer and was not in a position to include any particular language as a disclaimer. *Id.* at ¶ 8. It would have

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been reasonable to assume that the Party and/or Mr. Toledano knew the requirements and would include the appropriate disclaimer on any mailings. *Id.*

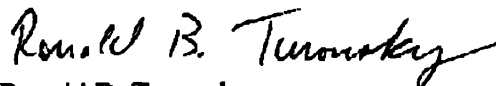
Moreover, if Mr. Toledano's position is correct, that he made errors while attempting to engage in exempted activities with respect to this mailer, that suggests even more strongly that there should be no action taken as to Mr. Prince and the Committee. If Mr. Toledano had complied with the rules, none of the other respondents would be in this situation.

Overall, Mr. Prince acted in good faith in all respects and certainly did not knowingly and willfully accept a contribution in excess of the limitations, intentionally fail to report the transaction, or intentionally fail to include the proper disclaimer language. It should also be noted that this was Mr. Prince's first campaign. *Id.* at ¶ 2. He has never been alleged to have violated the Act before. *Id.* He also was not successful in this campaign and is not the Democratic nominee in the upcoming election, and should be allowed to put this campaign behind him. *Id.*

V. Conclusion.

The Commission should conclude that, at least as to the Committee and Mr. Prince, no action should be taken. There is no reason to believe that there has been a violation of the Act by the Committee and/or Mr. Prince.

Very truly yours,



Ronald B. Turovsky
Manatt, Phelps & Phillips, LLP

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DECLARATION OF JAMES PRINCE

I, JAMES PRINCE, declare as follows:

1. The following is true of my own personal knowledge. If called as a witness, I could and would competently testify to the following.

2. I was a candidate to be the Democratic nominee for the 46th Congressional District in California. The primary election was held on March 26, 1996. I failed to win the nomination, placing third. This was my first campaign. I have never been alleged to have violated the Federal Election Campaign Act of 1971 before.

3. I have reviewed the complaint, which contends that James Toledano and the Orange County Democratic Central Committee (the "Party") received payments of \$5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of my candidacy, that the money was used to finance a mailer supporting my candidacy, that the transaction was not correctly reported, that the mailer did not include the appropriate disclaimer, and that the LaPrades exceeded the contribution limits.

4. I did not know that the transaction may have involved a contribution by Dr. LaPrade, Mrs. LaPrade, and/or the Party. I was unaware that there may have been any reportable activity on the part of the Committee with respect to the transaction. I was not aware that a contribution may have been made that should have been reported on either the pre-election or a 48 hour report. I did not knowingly, willfully, or intentionally accept a contribution in excess of the limitations, knowingly, willfully, or intentionally fail to report the transaction, or knowingly, willfully, or intentionally fail to include the proper disclaimer language.

5. More specifically, I did not know about the possible involvement of Dr. LaPrade and/or Mrs. LaPrade in this transaction. I did not know at the time of the

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alleged events that Dr. LaPrade and/or Mrs. LaPrade had spoken with Mr. Toledano and did not know what they had discussed. I did not speak to Dr. or Mrs. LaPrade and suggest or request that they make a contribution to the Party or make a contribution to my campaign in this fashion. I was unaware that Dr. LaPrade and/or Mrs. LaPrade had written a check in any amount to the Party until approximately when the mailer began to be received. If the Federal Election Commission (the "FEC") were to conclude that Dr. LaPrade and/or Mrs. LaPrade had earmarked a contribution to my campaign through Mr. Toledano and/or the Party, I was unaware that this had taken place. If the FEC were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made an excessive contribution to my campaign, I was unaware that this had taken place. If the FEC were to conclude that Dr. LaPrade and/or Mrs. LaPrade had made a contribution in order to allow the Party to prepare and disseminate the mailer -- or instructed the Party to use the money to pay for the mailer -- I was unaware of this.

6. I was unaware of Mr. Toledano's activities and/or the activities of the Party regarding this matter. I did not speak to Mr. Toledano about this transaction and suggest that funds from Dr. LaPrade or Mrs. LaPrade be used to pay for a mailer to support my candidacy. I did not know that Mr. Toledano may have used funds from Dr. LaPrade and/or Mrs. LaPrade to pay for a mailer supporting my candidacy. This particular expenditure was made without cooperation with me. I did not consult about this particular expenditure. I did not act in concert with them concerning this mailer. I did not give them my prior consent. There was no arrangement, coordination, or direction by me prior to the distribution of the mailer. Mr. Toledano was not authorized to raise or expend funds for me, never was an officer of the Committee, and never received any form of compensation or reimbursement from me and/or the Committee.

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7. I did not know that the Party may have made an excessive contribution. I reasonably relied that the Party and/or Mr. Toledano were acting properly with respect to any of their possible activities. I assumed that the Party would not make an excessive contribution. I assumed that the Party and/or Mr. Toledano would not accept, encourage, or be a conduit for an excessive contribution. I assumed that Mr. Toledano and/or the Party would comply with the appropriate requirements to make sure that its transactions were proper in all respects.

8. I in no way controlled the mailer and was not in a position to include any particular language as a disclaimer. I assumed that the Party and/or Mr. Toledano knew the requirements and would include the appropriate disclaimer on its mailings.

9. When I became aware of the allegations that there may have been a contribution from newspaper accounts, I erred on the side of disclosure by tentatively reporting this transaction on the next campaign report as a contribution. I did so even though it was not certain what had taken place merely in order to be sure the transaction fully was reported in some fashion to the FEC.

I declare under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct. Executed this 21 day of July 1996.


JAMES PRINCE